Supreme Court, U.S.
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MICHAEL RODAK, JR., CLER

NO. 80-593

OCTOBER, 1980 TERM

BARBARA ANN BISHOP, APPELLANT

VS.

TERRY WAYNE BURTON, APPELLEE

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO.

BARBARA ANN BISHOP, APPELLANT

V.

TERRY WAYNE BURTON, APPELLEE

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

Barbara Ann Bishop (formerly Barbara Ann Burton) appeals from a final judgement of the Supreme Court of Georgia which held that an Ohio child custody decree was entitled to full faith and credit in Georgia pursuant to the mandates of the Uniform Child Custody Jurisdiction Act (GA. CODE ANN. §74-501 *et seq.*). Appellant maintains that GA. CODE ANN. §74-514, as interpreted by the Georgia Supreme Court, violates the due process clause of the fourteenth amendment. The Georgia Supreme Court has held that this statute requires a Georgia court to accord full faith and credit to a sister state child custody decree even though the state had no personal jurisdiction over a non-resident defendant.

QUESTION PRESENTED

Does Section 74-514 of Georgia's Uniform Child Custody Jurisdiction Act. (GA. CODE ANN. §74-501 *et seq.*) violate the due process clause of the fourteenth amendment since the Georgia Supreme Court has held that it requires Georgia courts to recognize child custody judgments of other states even when the state rendering the judgment did not have personal jurisdiction over a non-resident defendant?

PARTIES

Barbara Ann Bishop, a resident of Georgia at all times material to the issues raised in this appeal, is the Appellant.

Terry Wayne Burton, a resident of Ohio at all times material to the issues raised in this appeal, is the Appellee.

TABLE OF AUTHORITIES

United States Supreme Court Cases
Estin v. Estin, 334 U.S. 541 (1948) 7,8,9
Griffin v. Griffin, 327 U.S. 220 (1945) 10
Kreiger v. Kreiger, 334 U.S. 555 (1948) 7,8,9
May V. Anderson, 345 U.S. 528 (1953) 6,7,8,9,10,12

State Court Cases
Boggus v. Boggus, 236 Ga. 126 (1976) 9
Burton v. Bishop, 246 Ga. 153 (1980) 1
Mathews v. Mathews, 238 Ga. 201 (1977) 8
Woods v. Woods, 238 Ga. 737 (1977) 8
Yearta v. Scroggins, 245 Ga. 831 (1980) 5,8,9,10

Constitutional Citations
United States Constitution,
Article IV, Section 1 ..... i,1,4,5,6,7,8,9,10,12
United States Constitution,
Amendment XIV, Section 1 ..... i,1,4,5,6,7,8,9,10,12
State Statutes
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GA. CODE ANN. §74-502 11
GA. CODE ANN. §74-504 11
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OPINION BELOW

The Opinion of the Supreme Court of Georgia and its denial of Motion for Rehearing are reported at 246 Ga. 153 (1980). (App. A, *infra.*)

STATEMENT OF JURISDICTION

Appellant appeals a final judgment of the Supreme Court of Georgia which accorded full faith and credit to an Ohio child custody judgment, despite the fact that Appellant was not a resident of Ohio when the custody suit was filed and judgment entered, she was not personally served with process, and she in no way acceded to the jurisdiction of the Ohio court.

The Supreme Court of Georgia entered its judgment on June 17, 1980. Appellant's timely motion for rehearing was denied on July 15, 1980.

Appellant has filed this appeal in accordance with the provisions of 28 U.S.C. §1257(2) and the Rules of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution, Article IV, Section 1:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and proceedings shall be proved, and the Effect thereof.

United States Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Georgia Code Annotated §74-514

The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substan-

tially in accordance with this Chapter or which was made under factual circumstances meeting the jurisdictional standards of the Chapter, so long as this decree has not been modified in accordance w'th jurisdictional standards substantially similar to those of this Chapter.

Ohio Revised Code §*3109.22*

Jurisdiction to determine custody of child.

(A) No court of this state having jurisdiction to determine the custody of a child shall exercise that jurisdiction unless one of the following applies:

(1) This state is the home state of the child at the time of commencement of the proceeding, or this state had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(2) It is in the best interest of the child that a court of this state assumes jurisdiction because the child and his parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(3) The child is physically present in the state and either has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent;

(4) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with division (A) (1), (2), or (3) of this section, or a court in another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

(B) Except as provided in division (A) (3) and (4) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdicton on a court of this state to make a child custody determination.

(C) Physical presence of the child, while desirable, it not a prerequisite for jurisdiction to determine his custody.

Ohio Revised Code §3109.23

Notice of custody proceeding; hearing.

(A) Before making a custody decree, the court shall give reasonable notice of the custody proceeding and opportunity to be heard to the contestants, any parent whose parental rights have not been previously terminated, and any person or public agency who has physical custody of the child. If any of these persons or the public agency is outside the state, notice and opportunity to be heard shall be given in accordance with division (B) of this section.

(B) Notice required for the exercise of jurisdiction over a person or public agency outside this state shall be given either in accordance with the Rules of Civil Procedure governing service of process within this state or by one of the following methods:

(1) In the manner prescribed by the law of the place in which the service is made for service or process in that place in an action in any of its courts of general jurisdiction;

(2) As directed by the court, including publication, if other means of notification are ineffective.

(C) Notice under division (B) of this section shall be served, mailed, delivered, or last published at least twenty days before any hearing in this state.

(D) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the Rules of Civil Procedure governing service of process within this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(E) Notice is not required if a person submits to the jurisdiction of the court.

STATEMENT OF THE CASE

A. Material Facts

Appellant Barbara Ann Bishop is a resident of Bulloch County, Georgia. Appellee Terry Wayne Burton resides in Ohio. The parties were married to each other on two

separate occasions. Their marital history reveals a propensity for frequently relocating their place of residence.

Appellant and Appellee first married in 1972 in Kentucky. They then moved to Georgia where Appellant divorced Appellee in December, 1976. In this first divorce action, a Georgia court had personal jurisdiction over both resident parties and it awarded custody of their minor children to Appellant.

The parties remarried in Georgia in 1977. Some time during 1977, they moved to Ohio. In November of that year, Mrs. Burton and her children left Ohio and returned to Georgia. At the time she left Ohio, neither party had instituted any action relating to child custody in that State and there had never been an Ohio court order of any type relating to the parties' children.

In February, 1978, Appellee filed suit for divorce and child custody in Clermont County, Ohio. Appellant, who resided in Georgia, never answered or entered an appearance in the Ohio action. Her only notification of the suit was received by registered mail pursuant to Ohio Revised Code §3109.23. On July 10, 1978, the Clermont County Court of Common Pleas awarded Appellee a divorce from Appellant and awarded him permanent custody of the parties' children. It is uncontroverted that neither Appellant nor her children were present in Ohio when Appellee's suit was filed or at any time up to and including the date of judgment.

On September 27, 1979, Appellee filed a complaint to enforce his Ohio child custody award in the Superior Court of Bulloch County, Georgia. Appellant answered this suit and challenged the constitutionality of Georgia's Uniform Child Custody Jurisdiction Act, GA. CODE ANN. §74-501 *et seq.*, on the ground that it obligated Georgia courts to enforce a sister state's judgment which had been entered in violation of the due process clause of the fourteenth amendment to the United State Constitution. A hearing was held in Bulloch County Superior Court at which counsel for the parties stipulated to the material facts. The trial court found that the Ohio judgment was not entitled to full faith and credit since the Ohio court did not have personal jurisdiction over Appellant or her children.

Appellee next sought and received permission to ap-

peal to the Supreme Court of Georgia for review of the final judgment of the Superior Court. On June 17, 1980, the Supreme Court reversed the lower court's decision. The Court referred to its recent opinion in *Yearta v. Scroggins*, 245 Ga. 831 (1980), which held that GA. CODE ANN. §74-514 mandates a Georgia court to accord full faith and credit to a sister state judgment even though there is no personal jurisdiction which would satisfy the full faith and credit clause of the United States Constitution. Based on this decision, the Georgia Supreme Court ruled that Appellee's Ohio custody decree was enforceable in Georgia.

Appellant made a timely application for rehearing to the Supreme Court of Georgia. Her request was denied on July 15, 1980. She filed her notice of appeal to this Court on October 1, 1980.

B. Raising the Federal Question

Appellant raised her constitutional claim at the earliest stage of the proceeding below. In her first responsive pleadings in Bulloch County Superior Court she moved that Appellee's Ohio judgment not be enforced in Georgia. Appellant maintained that Georgia's Uniform Child Custody Jurisdiction Act (GA. CODE ANN. §74-501 *et seq.*), which required the recognition of the Ohio decree, was unconstitutional in violation of the due process clause of the fourteenth amendment. She alleged in her pleadings that her due process rights would be violated if a Georgia court enforced an out-of-state custody decree which was obtained without personal jurisdiction over her and her children.

THE QUESTION PRESENTED IS SUBSTANTIAL

The question presented by this appeal is substantial for a number of reasons. First, the Georgia Supreme Court has implicitly upheld the constitutionality of Section 74-514 of Georgia's Uniform Child Custody Jurisdiction Act (GA. CODE ANN. §74-501 *et seq.*). It interprets this statute as requiring Georgia courts to accord full faith and credit to a sister state child custody judgment, even though the defendant and children who are the subjects of the action reside in a different state. The facts in the instant case bear an uncanny resemblance to those in

May v. Anderson, 345 U.S. 528 (1953); while the circumstances in *May* and this case are virtually identical, however, the Georgia Supreme Court arrived at a decision which is directly contrary to this Court's *May* opinion. Therefore, if *May* is viable law, the Supreme Court of Georgia's failure to hold that GA. CODE ANN. §74-514 violates the due process clause of the fourteenth amendment is necessarily incorrect. It is vitally important that family law practitioners and their clients know whether *May v. Anderson, supra*, remains controlling authority or if the position adopted by the Georgia Supreme Court is now correct. Unless this conflict is resolved, attorneys and parents will not know with certainty the consequences attendant on choosing not to respond to a custody action which has been instituted in a sister state.

Second, and of equal importance, this appeal questions the constitutional soundness of those portions of the Uniform Child Custody Jurisdiction Act which confer jurisdiction on state courts to decide the custody rights of non-resident parents who live with their children outside the forum state. Those portions of the Act which permit a state to determine custody rights of non-residents cannot be reconciled with the holding of *May v. Anderson, supra.* As of this date, Georgia, Ohio and over thirty other states have adopted the Uniform Child Custody Jurisdiction Act in substantially the same form. A decision that the jurisdictional portions of the Act meet or fail to pass constitutional muster will affect not only lawyers and parents in Georgia, but persons throughout the nation who are involved in interstate custody disputes.

A. The Georgia Supreme Court's Decision In The Instant Case Conflicts With This Court's Holding In *May v. Anderson.*

It has been almost thirty years since this Court entertained the question whether a state court must give full faith and credit to a child custody judgment of another state when the judgment was obtained in an *ex parte* proceeding without personal jurisdiction over a non-resident defendant. In *May v. Anderson*, 345 U.S. 528 (1953), the Supreme Court answered this query in the negative. Mr. Justice Burton, writing for the Plurality, reasoned

that a state could not cut off a mother's child custody rights when she was neither domiciled, resident or present in the forum state. A judgement rendered under these circumstances was not entitled to full faith and credit. (345 U.S. at 533).

In *May*, the parties were married and lived in Wisconsin.[1/] When marital problems arose, the mother moved with her children to Ohio. Her husband filed suit for divorce and child custody in Wisconsin. Although the mother was personally served in Ohio pursuant to a Wisconsin statute, she never entered an appearance in the suit. The father was awarded custody of the children in the *ex parte* Wisconsin proceeding.

Some years later, the mother failed to return the children to Wisconsin after a visitation period and the father instituted a habeas corpus action against her in Ohio. Since Ohio law prohibited child custody modification in a habeas corpus proceeding, the Ohio court considered only the question of who was entitled to immediate possession of the children. It held that Ohio courts had to accord full faith and credit to the Wisconsin decree.

The United States Supreme Court reversed. In so doing, the Court analyzed the question from a due process standpoint. It relied on a number of its recent decisions which provided that in a divorce action, a forum state could not determine the property rights of a non-resident defendant who neither was present in the state nor submitted to the jurisdiction of the court. *Estin v. Estin*, 334 U.S. 541 (1948); *Kreiger v. Kreiger*, 334 U.S. 555 (1948). *Estin* and *Kreiger* concerned alimony rights. The Supreme Court recognized that while a forum state had jurisdiction to terminate the marital status without personal jurisdiction over both parties, it could not affect the property interests of a non-resident defendant. A judgment purporting to make property dispositions was not entitled to full faith and credit.

1/ The factual summary herein is taken from Mr. Justice Burton's Opinion in *May v. Anderson, supra.*

The *May* court adopted the rationale of *Estin* and *Kreiger* with respect to child custody. The Plurality recognized that a mother's right to custody of her child was a personal right entitled to at least as much protection as her right to alimony. It held that a judgment of a forum state which purported to cut off the right to custody of minor children without personal jurisdiction over a non-resident defendant was not entitled to full faith and credit (345 U.S. at 533).

The facts in the case at bar are "on all fours" with those in *May*. Appellant moved with her children from Ohio to Georgia when the parties' marriage foundered. Her husband filed an action for divorce and child custody in Ohio, where Appellant was neither domiciled, resident nor present. As in *May*, Appellant was served[2/] in her new state of residence but she did not answer or enter an appearance in the Ohio action. Appellee was awarded custody of the children of the parties by the Ohio court even though the court did not have personal jurisdiction over Appellant.

After the Ohio *ex parte* judgment was entered, events transpired which remarkably mirror those in *May*. Appellee filed suit in Georgia to enforce his judgment. Georgia law is similar to that which applied in Ohio at the time *May* was decided in that a court may only determine present custody of children when considering enforcement of an existing decree. It is against the public policy of Georgia to entertain a custody modification in this circumstance. *Mathews v. Mathews*, 238 Ga. 201 (1977); *Woods v. Woods*, 238 Ga. 737 (1977).

The Superior Court in the instant case refused to recognize the Appellee's decree for the reason that the Ohio Court did not have jurisdiction over the persons of Appellant and her children. The Georgia Supreme Court, however, reversed the lower court and accorded full faith and credit to the Ohio judgment. It relied on its recent opinion in *Yearta v. Scroggins*, 245 Ga. 831 (1980). *Yearta* held that Section 74-514 of Georgia's Uniform Child Custody Jurisdiction Act,

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2/ Appellant was served by registered mail.

"Mandates that the courts of this state *shall recognize and enforce* an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Chapter . . ." (emphasis supplied) It is, therefore, apparent that the public policy of this State is to recognize under principles of comity, child custody decrees where there is no personal jurisdiction that would satisfy the full faith and credit clause of our Federal Constitution. [Emphasis in original].

245 Ga. at 832.

The holding in *Yearta*, which underpins the Georgia Supreme Court's opinion in this case, represents a departure from previous Georgia caselaw relating to recognition of out-of-state child custody decrees. Formerly, Georgia courts could not enforce a sister state custody judgment when a defendant and children were neither residents nor had submitted to the jurisdiction of the state that entered the judgment. *Boggus v. Boggus*, 236 Ga. 126 (1976). *Yearta* makes it abundantly clear that the sole reason for the reversal of the rule announced in *Boggus* and other cases was the enactment of the Uniform Child Custody Jurisdiction Act, and specifically GA. CODE ANN. §74-514. The Georgia Supreme Court has held that this provision "mandates" Georgia courts to accord full faith and credit to a foreign judgment, even when the state entering the judgment lacked personal jurisdiction over a non-resident defendant and children, (245 Ga. at 832).

Appellant submits that this interpretation flies directly in the face of *May, Estin*, and *Kreiger*, which, when read together, hold that a personal right may not be adjudicated by a state court unless that court has jurisdiction over the person of the defendant. Under the *May, Estin*, and *Kreiger* analysis, GA CODE ANN. §74-514 necessarily contravenes due process if it mandates Georgia courts to accord full faith and credit or comity to a judgement obtained when the defendant was neither domiciled nor resident in the forum state and did not submit to its jurisdiction.

Yearta also holds that GA. CODE ANN. §74-514 evidences a public policy that Georgia courts accord comity to child custody decrees obtained without per-

sonal jurisdiction over a defendant. That this is not a tenable position, however, was made apparent by this Court in *Griffin v. Griffin*, 327 U.S. 220 (1945). In *Griffin*, a case involving an award of alimony, the United State Supreme Court held that no jurisdiction can give effect to a judgment entered without due process of law, even as a matter of comity.

In summary, it is of paramount importance to lawyers and parents in Georgia that this Court address the disparity between the holding in *May* and the Georgia Supreme Court's position as announced in *Yearta* and the instant case as soon as possible. The Uniform Child Custody Jurisdiction Act, which was enacted in Georgia in 1979, has been interpreted by the Supreme Court of that State as requiring Georgia courts to grant wholesale recognition to out-of-state custody judgments. The confusion that the new trend has generated should be dispelled at the earliest possible moment. This Court should decide whether GA. CODE ANN. §74-514 is unconstitutional or whether *May v. Anderson, supra*, is no longer viable caselaw.

B. The Issue Raised In This Appeal Has A Nationwide Impact

The issue presented in this appeal is significant not only to the litigants here and attorneys and parents in Georgia. The ramifications of the Supreme Court of Georgia's decision affect attorneys and their clients across the nation. This is true because GA. CODE ANN. §74-514 is a provision of a uniform statute, the Uniform Child Custody Jurisdiction Act. This Act has been adopted in substantially the same form in over thirty states.[3/]

[3/] ALASKA STAT. §25.30.010 *et seq.*; ARIZ. REV. ANN. §8-401 *et seq.*; CAL. CIV. CODE §5150 *et seq.* (West); COLO. REV. STAT. §14-13-101 *et seq.*; DEL. CODE ANN. tit. 13 §1901 *et seq.*; FLA. STAT. ANN. 61.1302 *et seq.* (West); GA. CODE ANN. §74-501 *et seq.*; HAWAII REV. STAT. §583-1 *et seq.*; IDAHO CODE §5-1001 *et seq.*; ILL. REV. STAT. ch. 40 §2101 *et seq.*; IND. CODE §31-1-11.6-1 *et seq.*; IOWA CODE ANN. §598A.1 *et seq.*; KAN. STAT. ANN. §38-1301 *et seq.*; LA. REV. STAT. ANN. §13:700 *et seq.*; ME. REV.

The expressed purpose of the Uniform Child Custody Jurisdiction Act is to promote uniformity and cooperation in the recognition and enforcement of interstate custody decrees.[4/] The Act was conceived as a means of detering the rash of abductions and other removals of children to obtain custody awards in the forum state of the abductor's choosing.[5/] Under the Act a court must recognize and enforce custody judgments which were obtained in other states under statutory provisions substantially in conformance with the Act.[6/] The justification for this rule is to avoid relitigation of the custody decisions of other states.[7/]

The Uniform Act purports to confer jurisdiction on the courts of a state to enter vaiid extraterritorial child custody judgments.[8/] Under the Act, a Court has jurisdiction to decide a case if a child's home was in the state within six months before the commencement of the proceeding, the child is absent from the state because of this removal by a person claiming his custody, and one parent continues to live in the state.

STAT. ANN §801 *et seq.;* MD. ANN. CODE art. 16, §*3184 et seq.;* MICH. COMP. LAWS ANN. § 600.651 *et seq.;* MINN. STAT. ANN. §518A.01 *et seq.; MO. ANN. STAT.* §452.440 *et seq.* (Vernon); 1977 Mont. Laws §*61.401 et seq.;* 1979 Nev. Stats. 85; N.J. STAT ANN. 5 2A:34-28 *et seq.; N.Y DOM. REL. LAW* §75-a *et seq.* (McKinney); N.C. GEN STAT. §50A-1 *et seq.;* N.D. CENT. CODE §14-14-01 *et seq.;* OHIO REV. CODE §3109.21 *et seq.;* OR. REV. STAT. §109.700 *et seq.;* 11 PA. STAT. §2301 *et seq.;* R.I. GEN LAWS §15-14-1 *et seq.;* S.D. C.L. §26-5-5 *et seq.;* VA. CODE §20-125 *et seq.;* WASH. REV. CODE ANN. §26.27.010 *et seq.;* WIS. STAT. ANN. §822.01 *et seq.;* WYO. STAT. §20-5-101 *et seq.*

4/ *GA. CODE ANN.* §74-502. (For purposes of this discussion, reference will be made to Georgia's version of the Uniform Child Custody Jurisdiction Act.)
5/ *GA. CODE ANN.* §74-502(5).
6/ *GA. CODE ANN.* §74-514
7/ *GA. CODE ANN.* §74-502(6)
8/ *GA. CODE ANN.* §74-504
9/ *GA. CODE ANN.* §74-504(a)(1)

The jurisdictional provisions of the Uniform Child Custody Jurisdiction Act therefore permit a court to affect the custody rights of a parent who is not a resident of the forum state and whose children no longer reside in that state. As is set out in Subpart A above, this result cannot be reconciled with this Court's holding in *May v. Anderson, supra.* As one commentator has noted, the net effect of the Uniform Child Custody Jurisdiction Act is to legislatively "overrule" the *May* opinion.[10/]

The implications of analyzing the Uniform Child Custody Jurisdiction Act in light of the *May* test are overwhelming. If *May* is viable law, over thirty states have enacted legislation which allows a state court to adjudicate a parent's custody rights without due process of law. Over thirty states have enacted a provision identical to GA. CODE ANN. §74-514 which mandates their courts to recognize judgments entered without due process law. For this reason, it is critical that this Court address the issue presented in this case. If GA. CODE ANN. §74-514 is held unconstitutional, this decision will have a direct impact on the recognition of child custody judgments in the majority of the states.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the question presented is substantial and of great public importance. Appellant respectfully requests that probable jurisdiction be noted and the matter be set for argument.

Respectfully submitted,

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10/ *The Due Process Dilemma of the Uniform Child Custody Jurisdiction Act,* 6 OHIO N.U.L. REV. 586, 589 (1979).

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Appendix A

36017. BURTON v. BISHOP

Clarke, Justice.

We are called upon to decide whether a child custody judgment of an Ohio court is enforceable in Georgia under the provisions of the Uniform Child Custody Jurisdiction Act.

At one time, the parties lived in Muscogee County, Georgia, where they divorced in 1976. Subsequently reconciled, they remarried and lived together with their children in Ohio. In November, 1977, Mrs. Burton left Ohio, taking the children with her, and moved to Bulloch County, Georgia. Mr. Burton filed a divorce action against Mrs. Burton in Ohio in February, 1978, securing service by registered mail pursuant to Ohio Rules of Civil Procedure, Rule 4.3(A)(8), (B)(1). In July, 1978, the Ohio court entered a decree, the terms of which awarded a divorce to Mr. Burton and granted to him custody of the children. He then proceeded to file an action in Bulloch County, Georgia, the residence of Mrs. Burton (now Bishop), to enforce the custody decree of the Ohio court. The former wife answered, filed a counterclaim, and moved to dismiss the action. The Superior Court of Bulloch County held that the Ohio court did not have personal jurisdiction over the former wife and dismissed the former husband's action and the former wife's counterclaim.

The sole question before the court on Mr. Burton's appeal is whether the original Ohio decree granting custody to Mr. Burton is entitled to recognition in Georgia in the absence of personal jurisdiction of the Ohio court over Mrs. Burton (now Bishop). The Uniform Child Custody Jurisdiction Act, effective in Ohio at the time of the original decree, provides that a court has jurisdiction to reach a custody determination under the circumstances existing in this case: "(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if: (1) This State . . . (B) had been the child's home state within six months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State . . ." Code Ann. §74-504(a)(B).

In this case, Ohio had been the home state of the chidlren within six months before the commencement of the proceeding, and the children were absent from the state because of the removal and retention by their mother who was apparently claiming custody. The evidence also is that Mr. Burton continued to live in the State of Ohio.

Under our recent decision in *Yearta v. Scroggins*, 245 Ga. 831 (1980), Mr. Burton's original grant of custody was entitled to be inforced in the courts of this state pursuant to the Uniform Child Custody Jurisdiction Act. Ga. L. 1978, p. 258 (eff. Jan. 1, 1979); Code Ann. Ch. 74-5; Ohio Rev. Code Ann. §3109.31, *et seq.* (eff. Oct. 25, 1977). Accordingly, that portion of the judgment of the Bulloch County Superior Court granting former wife's motion to dismiss must be reversed.

Judgment reversed in part. All the Justices concur.

Submitted March 7, 1980 — Decided June 17, 1980 — Rehearing Denied July 15, 1980.

APPENDIX B

IN THE SUPREME COURT
FOR THE STATE OF GEORGIA

GEORGIA SUPREME COURT NO. 36017

BARBARA ANN BISHOP, f/k/a
BARBARA ANN BURTON, APPELLANT

VS.

TERRY WAYNE BURTON, APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BARBARA ANN BISHOP, f/k/a BARBARA ANN BURTON, hereby appeals to the Supreme Court of the United States from the final judgement of the Supreme Court of Georgia which reversed the decision of the Bulloch County Superior Court and accorded Appellee's Ohio child custody judgment full faith and credit in Georgia and implicitly upheld the constitutionality of the Georgia Uniform Child Custody Jurisdiction Act..
(Georgia Code Annotated §74-501 *et seq.)*

The Supreme Court of Georgia entered its judgment on June 17, 1980 and denied Appellant's timely motion for rehearing on July 15, 1980.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

This appeal questions the constitutionality of a statute of the State of Georgia. Pursuant to 28 U.S.C §2403(b) a copy of this Notice of Appeal will be served upon the Attorney General of the State of Georgia.

Respectfully submitted,

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STATE OF GEORGIA
COUNTY OF CHATHAM

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties of record with a copy of the attached Notice of Appeal by depositing the same in the United States Mail with correct postage affixed thereto. Counsel who have been served are:

Charles H. Brown
Susan E. Warren
Attorneys for Appellee
Post Office Box 478
Statesboro, GA 30458

Arthur K. Bolton
Attorney General for the State of Georgia
132 Judicial Building
Atlanta, GA 30334

This the 1st day of October, 1980.

PHILIP L. MERKEL
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that I have this day served all parties of record with a copy of the attached Jurisdictional Statement by depositing a copy of the same in the United States Mail with correct postage affixed thereto.

Counsel who have been served are:

Charles H. Brown
Susan E. Warren
Attorneys for Appellee
Post Office Box 478
Statesboro, GA. 30458

Arthur K. Bolton
Attorney General for the State of Geogia
132 Judicial Building
Atlanta, GA 30334

This the day of October, 1980.

PHILIP L. MERKEL
ATTORNEY FOR APPELLANT